

Federal Energy Regulatory Commission

§ 385.1013

§ 385.1006 Request for hearing (Rule 1006).

A participant may file with the Commission and serve on the other participants a request for hearing, which will be deemed granted. Such request must be filed concurrently with participant's first pleading.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 422, 50 FR 21600, May 28, 1985]

§ 385.1007 Presiding officer (Rule 1007).

(a) The presiding officer will determine the issues to be resolved in the proceeding and will give notice thereof to the participants. The presiding officer may require additional information from the participants and convene a prehearing conference for the purpose of determining the issues to be considered at a hearing, if one is to be held. The presiding officer may also specify the time available for oral argument and determine the nature of the hearing to be held.

(b) The presiding officer may determine, upon request by a participant, whether to permit the participant to raise new facts or issues not raised in prior proceedings on the contested order. Such a request may be granted if the facts or issues are facts or issues that:

(1)(i) Were not known and could not, with the exercise of due care, have been known to the participant at the time they could have been raised in prior proceedings; or

(ii) Are facts or issues that the participant was not permitted to raise in prior proceedings on the contested order due to an adverse procedural ruling alleged to be erroneous; and

(2) Are necessary for a full and true disclosure of the facts.

(c) The petitioner must file a request to raise new facts or issues simultaneously with its petition for review. The Secretary must file such a request simultaneously with its reply to the petition for review. A third party must make such a request by the filing deadline set by the presiding officer.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 422, 50 FR 21600, May 28, 1985]

§ 385.1008 Hearings (Rule 1008).

As soon as practicable, after receiving any request for hearing and all the pleadings under Rules 1004 (commencement of proceedings) and 1005 (replies), the presiding officer will give notice to the participants as to the time and place of the hearing.

§ 385.1009 Proof (Rule 1009).

(a) A participant seeking relief from the Secretary's denial of a request for adjustment has the burden of demonstrating the participant's entitlement to the relief sought.

(b) Relief will be granted under this subpart if a participant demonstrates, by a preponderance of the evidence, that such relief is warranted.

§ 385.1010 Certification of the record (Rule 1010).

The presiding officer will certify and file with the Office of the Secretary of the Commission, for the Commission, a copy of the record in the proceeding.

[Order 422, 50 FR 21600, May 28, 1985]

§ 385.1011 Final order (Rule 1011).

The Commission will issue a final order, affirming, modifying or vacating the contested order or directing other appropriate relief.

§ 385.1012 Off-the-record communications (Rule 1012).

The provisions of Rule 2201 (prohibited communications and other communications requiring disclosure) apply to proceedings pursuant to this subpart, commencing at the time a petitioner files a petition for review under Rule 1004 (commencement of proceedings).

[Order 607, 64 FR 51234, Sept. 22, 1999]

§ 385.1013 Attachments to pleadings (Rule 1013).

(a) Each party will file, as an appendix to each pleading which cites documents in the record developed in the prior proceedings on the adjustment request, one copy of each such document in its entirety and, if such document contains information exempt from public disclosure pursuant to rule 1003, a second copy of such document with such information deleted. The top of

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the first page of each such document will contain the word “PUBLIC” or “NON-PUBLIC,” to indicate whether it contains exempt information.

(b) One copy of the PUBLIC and NON-PUBLIC versions must be served on counsel for the petitioner and/or the Secretary, and one copy of the PUBLIC version must be served on counsel for each other participant separately represented unless the conditions of Rule 1003 are met, in which situation such counsel must be served with copies of both versions.

(c) In compiling appendices, the parties will include only documents specifically cited and relied upon in their pleadings. In light of the fact that the Commission always has access to the Secretary’s entire administrative record, the parties must not include irrelevant or repetitive documents in the appendices.

[Order 422, 50 FR 21601, May 28, 1985]

Subpart K—Petitions for Adjustments Under the NGPA

§ 385.1101 Applicability (Rule 1101).

(a) *Proceedings to which applicable.* Except as provided in paragraph (b) of this section, this subpart applies to proceedings of the Commission held in accordance with section 502(c) of the NGPA to provide for adjustments of:

(1) Commission rules, and
(2) Commission orders having the applicability and effect of a rule as defined in section 551(4) of title 5 of the United States Code (5 U.S.C. 551(4)) and issued under the NGPA, except orders issued under sections 301, 302, and 303 of the NGPA.

(b) This subpart does not apply to:

(1) Proceedings wherein the Commission by order grants an adjustment on its own motion or;

(2) Proceedings for which the Commission by order waives the provision of this subpart.

(c) *Relationship to other rules.* (1) Where a provision of this subpart is inconsistent with a provision in another subpart of this part, the former provision controls.

(2) When provisions of other subparts of this part require Commission action, such provisions as applied under this

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subpart shall be deemed to require staff action. This subpart does not require a hearing to which subpart E applies.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 478, 52 FR 28467, July 30, 1987]

§ 385.1102 Definitions (Rule 1102).

For purposes of this subpart:

(a) *Adjustment* means an order issued by Staff under Rule 1109 (orders):

(1) Granting relief from an order or rule issued by the Commission under the NGPA,

(i) Including exceptions, exemptions, modification, and rescissions of rules and orders have the effect of rule as defined in section 551 of title 5 of the United States Code (5 U.S.C. 551(4)) and issued under the NGPA; but

(ii) Excluding requests for just and reasonable rates under sections 104, 106, and 109 of the NGPA; and

(2) Granting an exemption, in whole or in part, for incrementally priced industrial boiler fuel facilities from section 201 of the NGPA, under the authority of section 206(d) of the NGPA and § 282.206 (industrial boiler fuel facilities exemption);

(b) *Petitioner* means a person who files a petition for adjustment under paragraph (c) of this section;

(c) *Petition* means a petition for adjustment filed under Rule 1103 (commencement of adjustment proceedings);

(d) *NGPA* means the Natural Gas Policy Act of 1978;

(e) *Party* means, with respect to a particular petition for adjustment, the person making the petition, and intervenor, or a person who has moved to intervene but whose motion has not been granted or denied under Rule 1105(b) (intervention in adjustment proceedings).

(f) *Staff* means the Director of the Office of Producer and Pipeline Regulation, or a person who is designated by the Director and who is an employee of the Commission.

§ 385.1103 Commencement of proceeding (Rule 1103).

A person commences a proceeding for an adjustment by filing a petition for adjustment with the Commission.